tion avoid liability because the error of the train despatcher was occasioned by the wrong of the operator." The court, in *Baltimore & O. R. Co. v. Baugh*, 149 U. S. 387, had previously decided that a train despatcher was a vice principal. Justice White reviews the previous decisions of the court as to the second point involved, and summarizes them briefly as follows: "Where the act is one done in the discharge of positive duty of the master, negligence in the performance of the act, however occasioned, is the act of the master and not the act of the fellow servant." This principle has been recognized by nearly all the state courts. *Sangamore Coal Min. Co. v. Wiggerhaus*, 122 Ill. 279; *Reid v. Burlington, C. R. & N. Ry. Co.*, 72 Iowa 166; *Atchinson, T. & S. F. R. Co. v. Napole*, 55 Kan. 401; *Lyttle v. Chicago & W. M. Ry. Co.*, 84 Mich. 289; *McGarry v. N. Y. & H. R. R. Co.*, 137 N. Y. 627.

In his dissent, Justice White insists that, if the present rule is adhered to, a person injured can recover neither under the broad department and vice-principal theories, for these have been narrowed by the court, nor where the act complained of is done by a vice-principal under the present theory, and the act is one done in pursuance of a positive duty imposed upon the principal, the result being that the party is remediless. "It introduces into the doctrine of fellow servant," says the learned justice, "as hitherto applied in these decisions, a contradiction which will render it impossible in the future to test the application of the rule of fellow servant by any consistent principle." This would seem to be too strong a statement of the case. The rule, as established by the decision, seems to be, that the railroad company will not be liable where the negligence, though flowing through the vice-principal, was not primarily his, but that of a fellow servant of the person injured. Had the negligence been on the part of the vice-principal it can hardly be doubted that the defendant would have been found liable.

BAGGAGE DISTINGUISHED FROM MERCHANDISE.

The case, *Saleeby v. C. R. R. of N. J.*, 90 N. Y. Supp. 1042, brings up the question, still an open one, "What constitutes baggage as distinguished from merchandise?"

This question has never been an easy one to answer. To give the answer in the form of a definition of the word "baggage" is a difficult matter. Under a given set of circumstances where suit is brought against a railroad corporation for loss of a trunk, to say, in endeavoring to determine exactly the plaintiff's right, that his claim must be limited to baggage, removes the difficulty but one short step. We must then face the question, "What is baggage?"

The rule on this subject can be stated only in general terms, and it is for the jury to decide under the facts of each case what articles come within the rule. *Mauritz v. N. Y., etc., R. R.*, 23 Fed. 765. There may be cases, of course, where the articles sought to be recovered for as baggage are clearly not such, as

where a valise containing nothing but samples of mechandise was lost, the samples being the property of the principal whose agent the plaintiff was. *Humphreys v. Perry*, 148 U. S. 627; *Story, Bailments*, 9th Ed., Sec. 565. Also where $11,250 was sought to be recovered as baggage. *Orange County Bank v. Brown*, 9 Wend. 85. Similarly there may be cases on the other extreme, where the articles lost are palpably articles of every-day necessity, such as one is bound to carry on a journey for personal convenience and comfort. Between these two extremes there is much room for doubt and hence a vast field for litigation. The test of baggage generally adopted and followed in this country is the English test contained in Lord Cockburn's definition in *Macrow v. G. W., etc., R. R.*, 6 Q. B. 622. According to this definition substantially everything which a passenger takes with him on a journey for his personal use or convenience befitting his station in life either with reference to the immediate necessities of the journey or to its ultimate purpose is baggage.

The first requirement then is that the article sought to be recovered for as baggage must be carried for the passenger's personal use or convenience as opposed to his business use or convenience. So while on the one hand a catalogue, prepared by the plaintiff for his own use, at his own expense, and which was his own property, has been held to be baggage (*Staub v. Kendrick*, 121 Ind. 226), and while novels carried for diversion and entertainment have been held to be baggage (*M. C. R. R. Co. v. Kennedy*, 41 Miss. 678), still, on the other hand, printed matter, in the shape of memoranda, and other papers relating exclusively to the business of a principal, carried by his agent, the plaintiff, have been held not to be such. *Yazoo & M. V. R. Co. v. G. H. Ins. Co.*, 37 So. 500.

The second requirement of Lord Cockburn's test is that the articles carried and sought to be recovered for as baggage must be for the use and convenience of the plaintiff according to his station in life. In *Isaacson v. N. Y. C. & H. R. R. Co.*, 94 N. Y. 278, Chief Justice Earl said: "It is agreed on all sides that it is not easy to draw a well-defined line between what is and what is not baggage. That which to one traveler would be indispensable, to another would be unnecessary. One's general habits must be taken in mind by the carrier when a passenger is taken for conveyance. And so, if certain articles are reasonably indispensable to the passenger, although they would be unnecessary for others, the articles may be recovered for as baggage, if lost." In the last part of his definition, Lord Cockburn said that the articles carried might be such as were proper, considering either the immediate necessities of the journey or its ultimate object. It was so held in *Macrow v. Western, etc., R. R., supra.* In many of the states, this has been declared to be the law only in part, the right of the passenger being limited in some jurisdictions to the baggage or articles required during the journey, and the railroad being

released from liability for other articles unless they were accepted by the railroad as baggage. *Wilson v. R. R. Co.*, 56 Me. 62; *K. C., P. & G. R. Co. v. State*, 65 Ark. 363; *R. R. Co. v. Swift*, 12 Wall. 252. In *Saleeby v. R. R.*, *supra*, articles from their nature to be classified as merchandise were held to be baggage through their having been accepted as such by the railroad with knowledge of their character.

LIABILITIES ARISING OUT OF CONTRACTS BETWEEN LABOR UNIONS AND EMPLOYERS.

With the growth of antagonism between labor and capital, and between union and non-union labor, the courts have been increasingly called upon to pass upon the validity of contracts between labor unions and employers. Where the employers have bound themselves to discharge non-union laborers and hire none but union men, the question has generally arisen as a collateral issue in suits brought by the discharged non-union men against the union men who procured their discharge. But few cases are recorded wherein the validity of these contracts has been tested as between the parties themselves. Such was, however, the question in *Jacobs v. Cohen*, 90 N. Y. Supp. 854. The defendants, Cohen & Sons, were sued by Jacobs, president of a labor union, on a promissory note given by them. The consideration was a contract by which the defendants bound themselves to hire none but members of the plaintiff's union who were in good standing and who produced a pass card from the union, and agreed to discharge any person whenever the plaintiff should notify them that such person was not in good standing. The defense was lack of consideration, maintaining that the contract relied upon was unlawful as against public policy.

In *Curran v. Galen*, 152 N. Y. 33, cited by the defense, the plaintiff sought damages from the defendants for having joined in a conspiracy to take away his means of earning a livelihood and prevent him from obtaining employment. The defendants set up a contract to justify their action in causing the plaintiff to be discharged. The judge in his decision said: "Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workingmen is to hamper or to restrict that freedom, and, through contracts or agreements with employers, to coerce other workingmen to become members of the organization, and to come under its rules and conditions, under the penalty of the loss of their positions and of deprivation of employment, then that purpose seems clearly unlawful, and militates against the spirit of our government and the nature of our institutions " It was also held that the fact that the contract was entered into for the purpose of preventing friction between the workingmen's organization and the employer would not legalize a plan of compelling workingmen not in affiliation with the organization to join it at the peril of being deprived of their employment.